

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

NICHOLAS HANSEN,

Case No.: 2:19-cv-02234-APG-BNW

Plaintiff,

Order

v.

[ECF Nos. 55, 60]

THEODOR SCHAEFER, DARREL
 DAVIES, JOE LOMBARDO, CAESARS
 ENTERTAINMENT CORPORATION, and
 CORNER INVESTMENT COMPANY,
 LLC,

Defendants.

Plaintiff Nicholas Hansen sues Caesars Entertainment Corporation and Corner Investment Company, LLC (collectively, Caesars) for false imprisonment. Hansen argues that Caesars was complicit in his improper detention when he was arrested by police officers. The officers held Hansen in a security room located in the Flamingo Hotel (which Caesars owns) while they completed his arrest paperwork.¹ Caesars moves for summary judgment, arguing that the officers had probable cause to arrest Hansen, which is a defense to false imprisonment. Hansen responds that the officers lacked probable cause to arrest him because they misunderstood the ordinance under which he was arrested, and that even if there was probable cause, he was falsely imprisoned pre-arrest.

I grant Caesars's motion. Even viewing the evidence in the light most favorable to Hansen, a reasonable jury could not conclude that the officers lacked probable cause to arrest him, or that he was falsely imprisoned pre-arrest.

¹ I will address Hansen's claims against the officers by separate order.

1 **I. BACKGROUND**

2 In 2017, Las Vegas Metropolitan Police Department (Metro) officers were in the
3 surveillance room of the Flamingo Hotel where they watched Hansen through a live security-
4 camera feed. ECF No. 82-1 at 3. Hansen was standing on the sidewalk outside the Cromwell
5 Hotel, holding a large sign, and advertising for local strip clubs. *Id.* at 2; ECF No. 60-10 at 1:14,
6 2:33. His sign read “[s]trip clubs[,] it is unavoidable[,] [i]t is your destiny,” on one side, and
7 “[h]urray for boobies,” on the other. ECF No. 60-10 at 1:14, 2:33. Officer Schaefer testified that
8 Hansen stood “in front of [an] escalator, almost right in line with one of the handrails.” ECF No.
9 82-2 at 3. Officer Davies testified that, because the pedestrian zone was “busy” and there were
10 “a lot of people along the boulevard,” Hansen was “impeding the flow of traffic,” particularly on
11 the escalator. ECF No. 82-1 at 5.

12 After the officers saw that “multiple people [were] going around [Hansen,] . . . causing a
13 backup [of] people on the escalator,” they concluded that the situation risked injury to passersby,
14 so they arrested him under Clark County Code of Ordinances (CCCO) § 16.11.090.² *Id.*; ECF
15 No. 60-1 at 1. The officers held Hansen in a security room located in the nearby Flamingo Hotel
16 while they completed his arrest paperwork. ECF No. 60-1 at 2; ECF No. 82-2 at 6. Eventually,
17 Hansen was transported to the Clark County Detention Center. ECF No. 82-1 at 6. Hansen
18 claims that he was falsely imprisoned while in custody in the Flamingo Hotel security room.

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22 ² The Metro officers cited Hansen for two ordinance violations under CCCO § 16.11: obstructing
23 a public sidewalk and storing materials on a public sidewalk. ECF No. 61-2 at 2. I need not
reach the second violation because I conclude that the Metro officers had probable cause to arrest
Hansen for obstruction.

1 II. ANALYSIS

2 Summary judgment is proper where a movant shows that “there is no genuine dispute as
3 to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P.
4 56(a). A fact is material if it “might affect the outcome of the suit under the governing law.”
5 *Anderson v. Liberty Lobby*, 477 U.S. 242, 249 (1986). A dispute is genuine if “the evidence is
6 such that a reasonable jury could return a verdict for the nonmoving party.” *Id.* at 248. The
7 moving party bears the initial burden of informing the court of the basis of its motion and the
8 absence of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). When the
9 nonmoving party has the burden of proof at trial, the moving party need only point out “that
10 there is an absence of evidence to support the nonmoving party’s case.” *Celotex*, 477 U.S. at 325;
11 *see also Fairbank v. Wunderman Cato Johnson*, 212 F.3d 528, 532 (9th Cir. 2000) (stating that
12 the moving party can meet its initial burden by “pointing out through argument . . . the absence
13 of evidence to support plaintiff’s claim”).

14 Once the moving party carries its burden, the nonmoving party must “make a showing
15 sufficient to establish the existence of [the disputed] element to that party’s case.” *Celotex*, 477
16 U.S. at 322. I view the evidence and reasonable inferences in the light most favorable to the
17 nonmoving party. *James River Ins. Co. v. Hebert Schenk, P.C.*, 523 F.3d 915, 920 (9th Cir.
18 2008).

19 Under Nevada law, false imprisonment is “an unlawful violation of the personal liberty of
20 another, and consists [of] confinement or detention without sufficient legal authority.” *Lerner*
21 *Shops of Nev., Inc. v. Marin*, 423 P.2d 398, 400 (Nev. 1967). “There is no false imprisonment
22 where [an] accused is imprisoned under [a] valid legal process.” *Nelson v. City of Las Vegas*, 665
23 P.2d 1141, 1144 (Nev. 1983) (internal quotation marks omitted). An arrest supported by

1 probable cause amounts to detention under a valid legal process, and it cannot give rise to a
2 claim for false imprisonment. *See Hernandez v. City of Reno*, 634 P.2d 668, 671 (Nev. 1981)
3 (affirming dismissal of false imprisonment claims where police had probable cause to arrest).

4 “Probable cause exists when, under the totality of the circumstances known to the
5 arresting officers (or within the knowledge of the other officers at the scene), a prudent person
6 would believe the suspect had committed a crime.” *Blankenhorn v. City of Orange*, 485 F.3d
7 463, 471 (9th Cir. 2007) (quotation omitted). “[P]robable cause means [a] fair probability, not
8 [a] certainty or even a preponderance of the evidence.” *United States v. Gourde*, 440 F.3d 1065,
9 1069 (9th Cir. 2006) (en banc) (quotation omitted). It is “not a high bar.” *Kaley v. United States*,
10 571 U.S. 320, 338 (2014).

11 Even reasonable mistakes of law and fact can justify probable cause. *See, e.g., Heien v.*
12 *N.C.*, 574 U.S. 54, 60-62 (2014) (“To be reasonable is not to be perfect . . .”). For example, “if
13 officers with probable cause to arrest a suspect mistakenly arrest an individual matching the
14 suspect’s description, neither the seizure nor an accompanying search of the arrestee would be
15 unlawful.” *Id.* at 61. The inquiry is based on the information “known to the arresting officer at
16 the time of the arrest.” *Devenpeck v. Alford*, 543 U.S. 146, 152 (2004). The inquiry is
17 objective. *Id.* at 153 (“Our cases make clear that an arresting officer’s state of mind (except for
18 the facts that he knows) is irrelevant to the existence of probable cause.”). In civil cases, the
19 existence of probable cause is generally a question of fact for the jury. *Gasho v. United States*, 39
20 F.3d 1420, 1428 (9th Cir. 1994). However, if there is no genuine issue of fact even when
21 viewing the evidence in the light most favorable to the nonmoving party, then “summary
22 judgment is appropriate if no reasonable jury could find an absence of probable cause under the
23 facts.” *Id.*

1 The CCCO provides that “no obstructive use, other than a permitted obstructive use,^[3]
 2 shall be permitted upon any sidewalk . . . if [it] would: (a) [c]ause the [level of service] for the
 3 sidewalk to decline below [level] C; or (b) [r]esult in a significant threat to or degradation of the
 4 safety of pedestrians.” Clark Cnty. Code Ords. §§ 16.11.035(a), (b). Level C exists when
 5 pedestrian flow is limited to ten people or less per minute, per foot. *Id.* §§ 16.11.020(b), (f). The
 6 CCCO further provides that “[a]ny person who violates any of the provisions of this chapter is
 7 guilty of a misdemeanor.” *Id.* § 16.11.090.

8 Caesars argues that Hansen was never falsely imprisoned because the Metro officers had
 9 probable cause to arrest him for obstructing the sidewalk. Hansen responds that the officers
 10 lacked probable cause under the ordinance because they failed to calculate the level of service
 11 attributable to his conduct, and they admitted in their depositions that the level of service did not
 12 decline below level C.

13 Viewing the facts in the light most favorable to Hansen, a reasonable jury could not
 14 conclude that the officers lacked probable cause to arrest him under CCCO § 16.11.090. The
 15 officers observed Hansen on the sidewalk for approximately 40 minutes. ECF No. 60-1 at 1-2.
 16 During that time, they saw “multiple people going around [him] . . . causing a backup [of] people
 17 on the escalator.” ECF No. 82-1 at 5. They also witnessed Hansen engaging passersby in
 18 conversation, forcing “people coming off the escalators . . . to walk around them.” *Id.* Based on
 19 these observations and the totality of information available to them, the officers concluded that
 20 the situation risked injury to passersby, so they arrested him. *Id.*; ECF No. 60-1 at 1. They
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22 ³ Hansen does not argue that his conduct amounted to a permitted obstructive use. But those
 23 uses include construction, repair, the placement of public safety equipment, the placement of
 licensed news racks, and uses that are protected by the National Labor Relations Act. Clark Cnty.
 Code Ords. §§ 16.11.020(g)(1)-(5).

1 marked on Hansen’s citation that he “did obstruct, block, hinder, or interfere with pedestrian
 2 passage . . . which resulted in a threat or degradation to the safety of pedestrians,” thereby
 3 invoking the ordinance subsection pertaining to pedestrian safety and not the subsection
 4 pertaining to level of service. ECF No. 61-2 at 2. Hansen offers no evidence that he did not
 5 obstruct pedestrian traffic near the escalator or otherwise degrade pedestrian safety, and the
 6 officers did not need to suspect or prove a decline in level of service to establish probable cause
 7 under CCCO § 16.11.035(b). Based on the evidence Hansen provides, the officers had probable
 8 cause to arrest, and Hansen was not falsely imprisoned post-arrest.⁴ A reasonable jury could not
 9 conclude otherwise.

10 Hansen argues that, even if probable cause supported his arrest, he was falsely
 11 imprisoned in the Flamingo during an excessively long pre-arrest detention. But a reasonable
 12 jury could not reach this conclusion because Hansen was placed under arrest at the outset of the
 13 incident. *See* ECF No. 60-9 at 1:01 (showing that, before officers took Hansen into the Flamingo,
 14 they approached him on the street, handcuffed him, and immediately explained that he was under
 15 arrest); *see also* ECF No. 82-1 at 6 (“We decided to arrest [Hansen] when we made contact with
 16 him and then we put him in handcuffs.”). There is no genuine dispute that Hansen was placed
 17 under arrest during his first contact with officers on the street (and before they entered the
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20 ⁴ Flamingo Hotel surveillance footage separately supports the conclusion that the officers had
 21 probable cause to arrest Hansen for violating the ordinance. *See, e.g.*, ECF No. 60-6 at 21:23:11,
 22 21:52:16 (showing congestion near an escalator as multiple pedestrians either pause and turn to
 23 observe Hansen, or otherwise walk around him); *id.* at 21:14:21, 21:15:00, 21:18:06, 21:19:33,
 21:20:20, 21:27:45-28:00; 21:49:26, 21:51:54, 21:56:07, 21:58:27 (showing pedestrians dip their
 heads or adjust their courses to avoid Hansen’s sign); *see also* Clark Cnty. Code Ord.
 §§ 16.11.020(e)(3), (7) (providing that holding a sign and “delaying, hindering, blocking,
 hampering, or interfering with pedestrian passage” constitutes an obstructive use of a public
 sidewalk).

1 Flamingo), so there was no pre-arrest detention inside the Flamingo during which Hansen could
2 have been falsely imprisoned.

3 **III. CONCLUSION**

4 I THEREFORE ORDER that defendants Corner Investment Company, LLC and Caesars
5 Entertainment Corporation's motion for summary judgment **(ECF No. 60) is GRANTED.**

6 I FURTHER ORDER that defendants Corner Investment Company, LLC and Caesars
7 Entertainment Corporation's motion for summary judgment **(ECF No. 55) is DENIED** as moot.

8 DATED this 24th day of March, 2022.

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11 ANDREW P. GORDON
12 UNITED STATES DISTRICT JUDGE
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